STATE OF MICHIGAN

COURT OF APPEALS

RANDALL J. BARTOE, Plaintiff-Appellant,	UNPUBLISHED February 18, 2010
v KAREN BARTOE, Defendant-Appellee.	No. 288556 Wayne Circuit Court LC No. 07-714081-DO

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. For the reasons set forth in this opinion, we affirm.

I. Facts and Procedural History

The parties were married for about 24 years. The marriage produced no children. The parties' marriage, though long in duration, was a difficult one that included a separation, marriage counseling at different times, and extra-marital affairs on the part of both parties. Plaintiff had one extra-marital affair toward the end of the marriage, while defendant had several extra-marital affairs or one-night stands in the earlier years of the marriage. Plaintiff acknowledged that he smoked marijuana regularly.

When the parties first married, plaintiff, who has a degree in petroleum engineering, worked for Chevron. For various reasons, the parties had concerns about plaintiff's employment with Chevron, so they decided that plaintiff would go to dental school. The parties financed plaintiff's dental school education at the University of Michigan with loans, and plaintiff received an Army scholarship for the last year of dental school. In addition, defendant's father loaned the parties about $32,500 while plaintiff was in dental school. Defendant, who has a bachelor's degree in advertisement, worked two jobs for five years while plaintiff went to dental school. For the most part, plaintiff did not work during the school year while he was in school, but there was testimony that he worked for at least one summer during that period. After plaintiff finished dental school, the parties moved several times. Plaintiff owed the army service years in exchange for the scholarship, and defendant worked during these moves. The parties eventually moved back to Michigan.

In Michigan, plaintiff worked for an established dentist for two years, earning approximately $60,000 annually. In July 1998, plaintiff purchased an existing dental practice for $360,000. Over a period of eight years, the parties made monthly payments of approximately $6,600 to pay off the debt for the practice. Plaintiff acknowledged that defendant helped pay off the debt for the practice. The value of the practice at the time of trial was $366,000, and the gross revenue for the practice in 2007 was $595,000.

Defendant, who had been employed throughout the marriage, found employment when the parties moved back to Michigan; she was employed until July 2006, when she quit a job as a project manager for Cooper Standard for which her annual salary was about $77,000. Defendant testified that she left her job with Cooper Standard because the job had changed significantly and would have required her to travel more, which she did not want to do, and that plaintiff supported her decision to quit.[1] After she quit her job, defendant was self-employed for a period of months with an online wellness company. At the time of trial, defendant was working as a support analyst in a customer service department at a yearly salary of $70,000. Her salary did not include health insurance.

In March 2006, plaintiff met with a divorce attorney, but did not inform defendant of this fact. In the year after he met with the divorce attorney, plaintiff purchased a building for his dental practice and renovated it, the plans to construct or purchase and renovate a building for his practice had begun more than two years before he met with the divorce attorney. Plaintiff established an LLC, of which plaintiff was the sole owner, and the LLC actually owned the building. The purchase price for the building was $390,000. Defendant asserted that she would not have been supportive of plaintiff's plans to purchase a building for his dental practice had she known that plaintiff had already consulted a divorce attorney. In all, plaintiff had three commercial loans for the building; two of these loans were for the purchase of the building itself and one was a construction loan for approximately $163,000. The construction loan was originally for $115,000; but in January 2007, plaintiff increased the construction loan to $163,000. The reason for the $48,000 increase was construction overages. At the time of trial, plaintiff owed approximately $523,600 for the three loans and was making monthly payments of approximately $5,800 to pay off the loans. The LLC charged plaintiff's practice monthly rent of $6,000. At the time of trial, the value of the building was between $408,000 and $417,000.

At the time of trial, plaintiff was living in the marital home, and defendant was living in an apartment. The parties owed more on the marital home than they would receive if they sold it. While the marital home was on the market for $399,000, defendant testified that the real estate agent who listed the property thought the asking price was too much and that the parties would not be able to sell the home even for $330,000. The parties owed approximately $345,000 on the home. Plaintiff acknowledged that the parties owed more on the home than it was worth.

The trial court issued an oral opinion on the record on August 15, 2008, and entered the judgment of divorce on October 3, 2008. The judgment ordered plaintiff to pay defendant

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[1] Plaintiff argues on appeal that defendant had received a below-average performance review and that defendant had no choice but to quit or be fired.

spousal support in the amount of $2,000 per month for eight years to terminate on October 31, 2016, or until further order of the court. The trial court awarded the marital home to defendant and awarded plaintiff the commercial building in which his dental practice was located. The trial court awarded plaintiff's dental practice to him, but awarded defendant $183,000, representing her one-half interest in plaintiff's dental practice, to be paid in monthly installments of $2,494.97 over a period of eight years. The trial court awarded each party their respective vehicles and bank accounts and ordered the parties to evenly split their IRAs, which amounted to an award of about $80,000 for each party. The trial court ordered the parties to alternate their Arizona time share each year and ordered each party responsible for the costs of the time share during their year. As far as debts, the trial court ordered plaintiff to assume his $20,000 student loan debt, ordered the parties to split equally debt owed to defendant's father and ordered the parties to split defendant's $20,000 credit card debt.

Plaintiff subsequently moved for a reduction in spousal support, and the trial court denied the motion, finding that it was not warranted by a change of circumstances.

II. Standard of Review

The trial court must make findings of fact and dispositional rulings in a divorce action. On appeal, the factual findings must be upheld unless they were clearly erroneous. *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001). A factual finding is clearly erroneous if, after reviewing all of the evidence, the reviewing court is left with a definite and firm conviction that a mistake has been made. *Johnson v Johnson*, 276 Mich App 1, 10-11; 739 NW2d 877 (2007). The trial court's factual findings are accorded substantial deference, *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008), and the reviewing court may not substitute its judgment for that of the trial court and must give special deference to the trial court's findings when they are based on the credibility of the witnesses. *Johnson*, 276 Mich App at 11. If the appellate court upholds the trial court's findings of fact, it must also decide if the dispositional ruling was fair and equitable in light of the facts. *Reed v Reed*, 265 Mich App 131, 150; 693 NW2d 825 (2005). The trial court's dispositional rulings are discretionary and will be affirmed unless the appellate court is left with a firm conviction that the decision was inequitable. *Id*.

III. Analysis

A. Spousal Support

Plaintiff argues that the trial court's award of spousal support to defendant was not fair and equitable in light of the facts and circumstances and that the trial court clearly erred in making certain factual findings related to the issue of spousal support.

"The object in awarding spousal support is to balance the incomes and needs of the parties so that neither will be impoverished; spousal support is to be based on what is just and reasonable under the circumstances of the case." *Berger*, 277 Mich App at 726. The following are factors that the trial court should consider in awarding spousal support:

> (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of

> property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the parties' health, (10) the prior standard of living of the parties and whether either is responsible for the support of others, (11) contributions of the parties to the joint estate, (12) a party's fault in causing the divorce, (13) the effect of cohabitation on a party's financial status, and (14) general principles of equity. [*Id.* at 726-727, quoting *Olson v Olson*, 256 Mich App 619, 631; 671 NW2d 64 (2003).]

Plaintiff argues that the trial court clearly erred in finding as a matter of fact that plaintiff took home $186,000 per year. According to plaintiff, the proofs established that plaintiff's *gross* income was $186,000 per year, not his net income. The trial court did not characterize plaintiff's income as gross or net; it simply stated, at least twice in its oral opinion, that plaintiff takes home $186,000 per year in income. The trial court's factual finding is supported by the testimony of John Stockdale. Stockdale testified that plaintiff's income in 2007 was $186,000, although Stockdale explained that this income included $131,000 in "reasonable compensation for the services he performed" and $54,000 in after tax operating income. Thus, the trial court did not make a clearly erroneous finding of fact in this regard.

Plaintiff argues that it was improper for the trial court to conclude that plaintiff had $186,000 available to pay spousal support to defendant when plaintiff would necessarily be required to use any income over $131,000 to pay defendant the monthly installments of $2,494.97 for one-half the value of his practice. Plaintiff's argument in this regard is somewhat unclear and undeveloped, but plaintiff asserts that this is improper double-dipping apparently because he would be required to use the income over $131,000 (which is about $54,000) to pay for spousal support and to pay off defendant for her one-half interest in the value of the practice. The trial court ordered plaintiff to pay defendant $2,000 per month in spousal support, for a total yearly spousal support obligation of $24,000. The trial court also ordered plaintiff to pay defendant monthly installments of $2,494.97, for a yearly payout of approximately $30,000 for defendant's half of the practice. Plaintiff's total yearly spousal support payments and payments for the practice total approximately $54,000. Plaintiff's double dip argument is nonsensical because both amounts can be paid from plaintiff's $54,000 in after-tax operating income.

Plaintiff also argues that the trial court clearly erred in finding that plaintiff had an unexercised ability to earn. The trial court did not explicitly find that plaintiff had an unexercised ability to earn. To the contrary, the trial court noted that plaintiff's income was dependent upon the hours that he chose to work and that his dental practice could garner additional income if he chose to work more. Plaintiff testified that he generally worked four days per week, and there was additional testimony that this was a typical work week for a dentist. However, the trial court's finding that plaintiff's practice could earn additional income if plaintiff chose to work more hours is supported by the testimony of one of plaintiff's employees, who testified that plaintiff's dental practice was thriving. There was no clear error in the trial court's factual findings in this regard.

Plaintiff argues that the trial court erred in finding that plaintiff had $186,000 available for spousal support. According to plaintiff, only $81,000 of his income is available for support because his gross income of $186,000 must be reduced by $55,000 for "Practice Value/Payments" and by $50,000 for mortgage and tax payments. At the time of trial, defendant earned $70,000 per year and paid for her own health benefits. For comparison purposes, it was proper for the trial court to consider the parties' respective incomes without any reduction for payment of mortgages and taxes. As stated above, the trial court's finding that plaintiff took home $186,000 was not clearly erroneous. However, even excluding the $54,000 or $55,000 of plaintiff's after-tax operating income, plaintiff still earned almost twice as much as defendant. Adding the spousal support to plaintiff's yearly income increases her yearly income to about $94,000; plaintiff's yearly income of $131,000, less the $24,000 he must pay in spousal support to defendant, is about $107,000. Thus, even considering plaintiff's income at the lower amount of $131,000, plaintiff's income is still slightly higher than defendant's, even with spousal support.

Plaintiff argues that the trial court erred in failing to consider the extensive debt that plaintiff was paying for his dental building and the effect of this debt on his ability to make spousal support payments. Contrary to plaintiff's argument, the trial court's oral opinion on the record indicates that the trial court did consider the debt for the building in awarding spousal support ("I am cognizant that he [plaintiff] now has a building payment to make from the income realized by the practice."). In any event, it appears from the record that this building debt was not paid out of plaintiff's income of $131,000. The evidence established that the building was owned by an LLC, which was solely owned by plaintiff, and that the LLC charged the practice $6,000 a month for rent. This rental amount would have covered the approximately $5,800 loan payments for the building.

Furthermore, any argument that plaintiff was unable to pay the spousal support of $2,000 per month is refuted by the evidence. Plaintiff's monthly income of approximately $10,900 (based on an annual income of $131,000) was more than sufficient to pay his expenses, and the evidence showed that defendant would have a monthly shortfall of about $2,500. Furthermore, there was evidence that before the parties split, plaintiff regularly contributed $6,000 per month to pay the couple's expenses. There is no evidence that payment of spousal support of $2,000 per month would impoverish plaintiff.

In awarding spousal support to defendant, the trial court articulated and addressed the appropriate factors outlined above. *Berger*, 277 Mich App at 726-727. The trial court's factual findings were not clearly erroneous, and the trial court balanced the needs and incomes of the parties. We are not left with a definite and firm conviction that the award of spousal support was inequitable.

B. Property Division

Plaintiff also argues that the trial court's property division was not fair and equitable in light of the facts and circumstances and that the trial court clearly erred in making certain findings of fact regarding the property division.

"The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances." *Id.* at 716-717. The division of property is not required to be mathematically equal, "but any significant departure from congruence must be clearly explained." *Id.* at 717. The factors that the trial court may consider in dividing the marital estate include:

> (1) the duration of the marriage, (2) the contributions of the parties to the marital estate, (3) the age of the parties, (4) the health of the parties, (5) the life situation of the parties, (6) the necessities and circumstances of the parties, (7) the parties' earning abilities, (8) the parties' past relations and conduct, and (9) general principles of equity. [*Id.*]

The trial court must consider all relevant factors, but may not assign disproportionate weight to any one circumstance. *Id.* The "trial court may also consider additional factors that are relevant to a particular case." *Id.*

Plaintiff first argues that the trial court clearly erred in finding that defendant would have chosen not to terminate her employment with Cooper Standard if plaintiff had told her that he had consulted a divorce attorney. According to plaintiff, the evidence established that defendant's only choice regarding her employment was to quit or be fired, and that both plaintiff and defendant believed that it was better for her to leave her employment voluntarily than be fired. Although defendant testified that she thought she was being set up by her boss, she also stated that her boss contacted human resources to see if there was another position for her in the company and asserted that she quit her job because the job had changed significantly and would have required her to travel more, which she did not want to do. Defendant also asserted that she would not have quit her job if she had known that plaintiff was going to divorce her. This Court will defer to the trial court's credibility determinations, as the trial court is in the best position to determine the credibility of witnesses. *Id.* at 708; MCR 2.613(C). The trial court did not clearly err in finding that defendant would not have quit her job if she had known that plaintiff had consulted a divorce attorney. This finding was supported by defendant's testimony.

In addition, the trial court's finding that defendant would have made different financial decisions if plaintiff had been honest about the fact that he had met with a divorce attorney also is not clearly erroneous. Defendant testified that if plaintiff had informed her about his meeting with the divorce attorney, the parties could have put the marital home on the market a year earlier and she would not have supported the purchase of the building for plaintiff's dental practice. The trial court's finding that "defendant was financially strung along" by plaintiff is supported by defendant's testimony.

Plaintiff asserts that in dividing the marital assets, the trial court over-emphasized the fact that he met with a divorce attorney in March 2006 without defendant's knowledge and that the trial court's reasoning amounts to a finding based on fault. The trial court's reasoning is not tantamount to a finding that plaintiff was at fault. In its oral opinion on the record, the trial court specifically stated that it would not make a finding regarding fault. Moreover, it was not improper for the trial court to consider the fact that plaintiff consulted a divorce attorney without informing defendant when the parties made a substantial financial investment in a building for plaintiff's dental practice in the year after plaintiff consulted the attorney, and defendant made financial decisions that were based on her belief that the parties would remain married. Defendant testified that if she had known that plaintiff met with a divorce attorney in March 2006, she would have made different decisions regarding quitting her job and supporting plaintiff's decision to purchase the building for his dental practice. The trial court is permitted to consider general principles of equity when dividing marital assets. *Berger*, 277 Mich App at 717. Plaintiff's consultation with a divorce attorney without defendant's knowledge, and defendant's subsequent decision to quit a job that paid an annual salary of $77,000, and her support of plaintiff's purchase of an office building for his dental practice, involves general principles of equity. Moreover, our review of the trial court's oral opinion on the record reveals that the trial court did not give this factor undue weight in making the property distribution in this case.

The trial court's division of marital assets was equitable under the circumstances. There were three primary marital assets: the marital home, plaintiff's dental practice, and the building that housed plaintiff's dental practice. The trial court awarded defendant $183,000, or one half the value of plaintiff's dental practice. This was fair and equitable because the evidence established that plaintiff purchased the practice from another dentist, and defendant worked and contributed financially to paying off the practice, a fact which plaintiff acknowledged at trial. The trial court split the remaining marital assets, awarding the marital home to defendant and the building to plaintiff. The evidence established that both the marital home and plaintiff's building had a negative equity. Based on the evidence, the parties owed approximately $345,000 on the home, and would not be able to sell the home even for $330,000. Thus, there was at least a $15,000 negative equity on the home. Based on the debt for plaintiff's building and the value of the building, there was a negative equity in the building of approximately $107,000 to $116,000. Although plaintiff received the property that was saddled with more debt, this is equitable under the circumstances of the case. Plaintiff had met with a divorce attorney before the parties made the decision to purchase and renovate the building and did not disclose this fact to defendant, who stated that she would not have supported the purchase of the building had she known about plaintiff's meeting with a divorce attorney. Furthermore, plaintiff made the decisions that led to the increased cost of the renovations. In addition, plaintiff would receive the benefit of the use of the building as it housed his dental practice, and he would also ultimately realize any profits from the sale of the building in the future. Significantly, at trial, plaintiff was clearly not interested in splitting the building equally. When defense counsel, on cross-examination, asked plaintiff "But . . . what's wrong with her [defendant] being a 50 percent owner of the building until the market gets better and then she can sell her half back to you and break even, maybe? What's wrong with that?" plaintiff responded: "It just doesn't get us done." Based on his trial testimony, plaintiff clearly did not want to share the building with defendant. Under all the circumstances, then, it was fair and equitable for the trial court to award plaintiff alone the building and fair that he alone would be responsible for the debt on the building. To the extent that plaintiff challenges the trial court's refusal to offset the negative equity on the building against the value of plaintiff's dental practice, this decision was also fair and equitable in light of plaintiff's non-disclosure to defendant that he had met with a divorce attorney before the parties embarked on purchasing the building for plaintiff's dental practice and expending large sums to renovate the building.[2] In sum, then, contrary to plaintiff's claim on appeal, the trial court's distribution of marital assets was fair and equitable under the circumstances.

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[2] The trial court's refusal to offset the debt on the building against the value of plaintiff's practice is also supported by the testimony of John Stockdale, who testified that the value of plaintiff's practice was $366,000. According to Stockdale, because the building was not owned by plaintiff's practice, but by a separate LLC, he valued plaintiff's dental practice without any reductions for the building's debt.

C. Other Arguments

Plaintiff argues that the trial court ordered plaintiff to pay defendant's credit card debt, which included charges for attorney fees, in conflict with the trial court's conclusion that each party should pay their own attorney fees. Plaintiff also argues that the trial court erred in ordering plaintiff to pay the fees of the jointly hired business evaluator. Plaintiff merely asserts error in his brief on appeal, without citation to legal authority. A party may not merely announce their position and leave it to this Court to unravel and elaborate for them their arguments and search for authority to support or reject their position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). We decline to address these issues due to plaintiff's cursory treatment of them in his brief on appeal. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).

D. Conclusion

The trial court's division of assets and award of spousal support were fair and equitable in light of the facts and circumstances. The trial court's findings of fact with respect to these dispositional rulings were not clearly erroneous.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello